

# **COMPARISON OF STATE WORKERS' COMPENSATION SYSTEMS**

**Texas Department of Insurance  
Workers' Compensation Research Group**

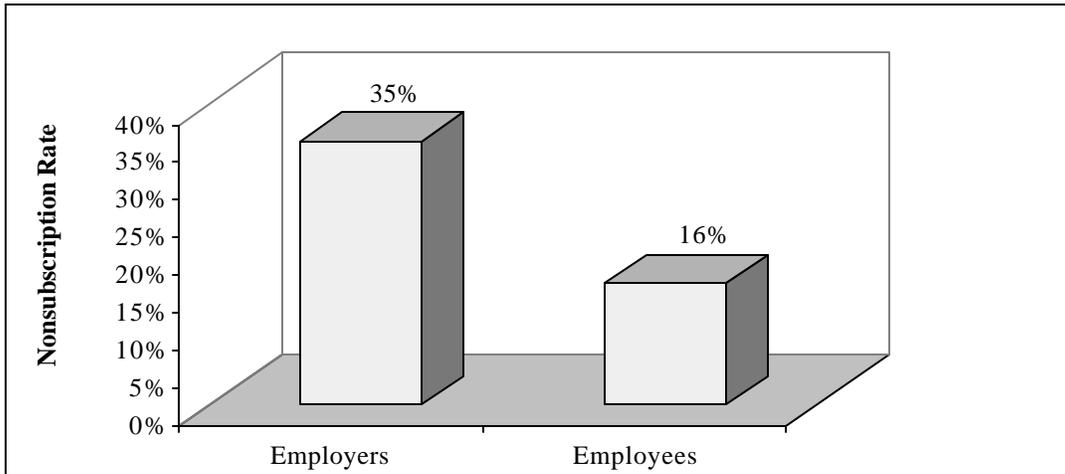
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## **State Workers' Compensation Coverage Requirements**

- Texas is the only state that allows any private sector employer the option of not purchasing workers' compensation coverage for employees (also known as "nonsubscription" to the Texas workers' compensation system).
- Although most states have mandatory workers' compensation coverage requirements, certain states do not require workers' compensation coverage for particular industries. For example, in states such as Georgia, Kansas, Missouri, Nebraska, and Wyoming, workers' compensation coverage is elective for certain agricultural employers.
- Approximately 14 states with compulsory workers' compensation laws provide exemptions for small private sector employers. **See Table 1.**
  - Four of these states exempt employers with fewer than five employees;
  - Two of these states exempt employers with fewer than four employees;
  - Seven of these states exempt employers with fewer than three employees; and
  - One state exempts employers with one employee.
- As of 2001 (the most recent estimates to date), an estimated 35 percent of year-round Texas employers (approximately 114,000 firms) did not carry workers' compensation coverage. These firms employ approximately 16 percent of the Texas workforce (approximately 1.4 million workers). **See Figure 1.**
- Among industry types, nonsubscription rates are highest among employers in the retail trade (48 percent), services (38 percent), and manufacturing (36 percent) sectors and lowest among employers in the mining (12 percent) and wholesale trade (25 percent) sectors. **See Figure 2.**
- Larger employers are significantly less likely to be nonsubscribers, compared to smaller employers. Almost half (47 percent) of the smallest employers in the state (i.e., one to four employees) are nonsubscribers to the workers' compensation system, compared to just 14 percent of employers with 500 or more employees.
- According to the 2001 nonsubscription study completed by the Research and Oversight Council on Workers' Compensation (ROC), the most frequent reasons nonsubscribing employers cited for not purchasing workers' compensation coverage were:
  - the cost of workers' compensation premiums; and
  - that some employers felt there were too few employees to warrant purchasing the coverage.
- Over half of the nonsubscribing employers surveyed by the ROC in 2001 (56 percent) indicated that they pay occupational benefits to employees injured on the job. Of the nonsubscribers who indicated that they pay benefits to injured workers:
  - Eighty-two percent indicated that they pay some or all medical expenses for injured workers; and
  - Sixty-nine percent indicated that they pay income benefits to injured workers.

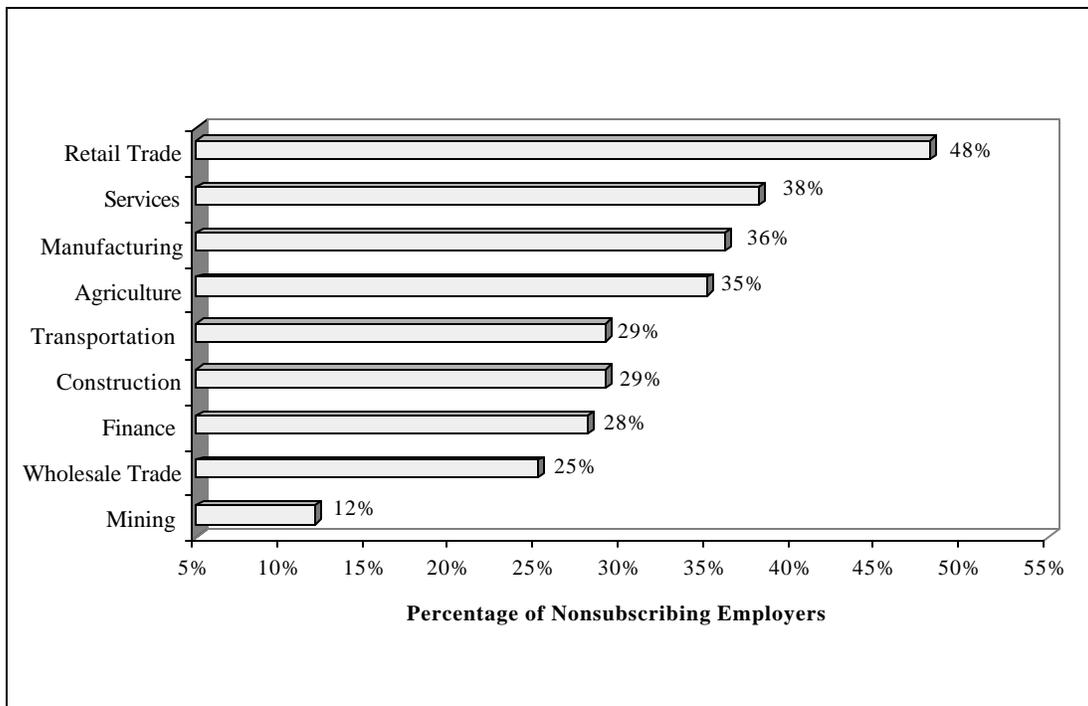
**Figure 1**  
**2001 Nonsubscription Rates for the Texas Workers' Compensation System**



Source: *Survey of Employer Participation in the Texas Workers' Compensation System*, Research and Oversight Council on Workers' Compensation and the Public Policy Research Institute at Texas A&M University, 2001.

Note: The sample was limited to only year-round employers, which were active in four consecutive quarters 1/1/2000 - 12/31/2000. Firms that hire only seasonal employees were excluded from the analysis

**Figure 2**  
**Employer Nonsubscription Rates by Industry**



Source: *Survey of Employer Participation in the Texas Workers' Compensation System*, Research and Oversight Council on Workers' Compensation and the Public Policy Research Institute at Texas A&M University, 2001.

**Table 1**  
**State-by-State Comparisons of Statutory Workers' Compensation Coverage Requirements**  
**for Private Sector Employers**

<b>Elective Coverage for Private Employers</b>	<b>Mandatory Coverage for All Private Employers</b>	<b>Mandatory Coverage for Private Employers with 3 or More Employees</b>	<b>Mandatory Coverage for Private Employers with 4 or More Employees</b>	<b>Mandatory Coverage for Private Employers with 5 or More Employees</b>
<b>New Jersey*</b>	Alaska	Arkansas	Rhode Island	Alabama
<b>Texas</b>	Arizona	Georgia	South Carolina	Mississippi
	California	Michigan	Florida	Missouri
	Colorado	New Mexico		Tennessee
	Connecticut	North Carolina		
	Delaware	Virginia		
	Hawaii	Wisconsin		
	Idaho			
	Illinois			
	Indiana			
	Iowa			
	Kansas			
	Kentucky			
	Louisiana			
	Maine			
	Maryland			
	Massachusetts			
	Minnesota			
	Montana			
	Nebraska			
	Nevada			
	New Hampshire			
	New York			
	North Dakota			
	Ohio			
	Oklahoma			
	Oregon			
	Pennsylvania			
	South Dakota			
	Utah			
	Vermont			
	Washington			
	West Virginia			
	Wyoming			

Source: U.S. Department of Labor, Office of Workers' Compensation Programs, January 2003; the U.S. Chamber of Commerce, 2003 Analysis of Workers' Compensation Laws, 2003; and various state workers' compensation agency websites, 2004.

Note: \* New Jersey has a single law, which includes two alternatives for employers: 1) purchase a standard workers' compensation insurance policy; or 2) get approval to self-insure from the state and purchase a form of employers' liability insurance based on traditional common law remedies. Due to the restrictive nature of the statute, virtually all New Jersey employers have opted to purchase a workers' compensation insurance policy. Certain states do not require workers' compensation coverage for particular industries. For example, in states such as Georgia, Kansas, Missouri, Nebraska, and Wyoming, workers' compensation coverage is elective for certain agricultural employers.

## **Statutory Limitations on Medical Benefits**

- The vast majority of states (45 states, including Texas) do not place any statutory limitations on medical benefits, including the length of time an injured worker may receive medical care related to an on-the-job injury or the total amount of money that can be spent on medical care related to an on-the-job injury.
- Of the remaining five states:
  - Two states (Florida and Montana) require injured workers to pay a co-payment for medical services under certain circumstances;
  - One state (Tennessee) places limits on psychological treatment if not based on a referral from a physician;
  - One state (Ohio) specifies that once the injured worker has received Temporary Total Disability benefits (i.e., income benefits) for ninety days, the worker must be evaluated by the exclusive state fund to determine continued eligibility for income benefits and the appropriateness of the medical treatment being provided; and
  - One state (Arkansas) ends employer liability for medical care after six months if the worker has never lost time away from work, returned to work for at least six months, or a maximum of \$10,000 has been paid, unless the employer agrees to extend the time and dollar limits.
- It is important to note that although most states do not place limits on an injured worker's access to medical care for a work-related injury, many states limit the usage of specific medical services (e.g., limitations on the number of chiropractic manipulations that can be billed per patient) through statutory provisions or state-adopted treatment guidelines.

## **Statutory Provisions Relating to Choice of Treating Doctor**

- Texas is currently one of 30 states that allow injured workers to choose their initial medical provider (often referred to as the “treating doctor” in statute). **See Table 2.**
  - One of these employee-choice states allows injured workers to choose their treating doctors if workers can demonstrate that they or a family member have a record of previous treatment with a particular doctor.
  - Three of these employee-choice states require injured workers to choose their treating doctor from a list maintained by the employer.
  - Four of these employee-choice states, including Texas, require injured workers to choose their treating doctor from a list prepared by the state agency charged with administering the workers’ compensation system.
  - Five of these employee-choice states allow injured workers to select their treating doctor if their employer or insurance carrier does not have a managed care plan for work-related injuries; however, if a managed care plan exists, the injured worker must choose a treating doctor inside the network.<sup>1</sup>
  - Seventeen of these employee-choice states provide that injured workers have unlimited initial choice of treating doctor.
- Of the twenty states that allow employers to choose the treating doctor:
  - Three states allow the state administrative agency to authorize a change of doctor based on a request by the injured worker;
  - Seven states specify that the employer may choose the treating doctor for a specified period of time (usually spelled out in statute), after which injured workers may change to a treating doctor they select; and
  - Ten states allow employers to designate the injured worker’s treating doctor.

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<sup>1</sup> These states include Connecticut, Montana, New Hampshire, North Dakota, and Oregon.

**Table 2**  
**State-by-State Comparison of Statutory Provisions Relating to**  
**Initial Choice of Treating Doctor**

States with Employee Choice of Treating Doctor			States with Employer Choice of Treating Doctor		
Employee Has Initial Choice of Treating Doctor	Employee Selects from List Prepared by State Agency	Employee Selects from List Maintained by Employer	Employer Has Initial Choice of Treating Doctor	Employer's Choice of Doctor May Be Changed by State Agency	After Specified Period of Time, Employee Has Choice of Treating Doctor
Alaska	Connecticut	Georgia	Alabama	Arkansas	California**
Arizona	Nevada	Tennessee	Florida	Colorado	Maine
Connecticut*	New York	Virginia	Indiana	Idaho	Michigan
Delaware	<b>Texas</b>		Iowa		New Mexico
Hawaii			Kansas		Pennsylvania
Illinois			Missouri		Utah
Kentucky			New Jersey		Vermont
Louisiana			North Carolina		
Maryland			Oklahoma		
Massachusetts			South Carolina		
Minnesota					
Mississippi					
Montana*					
Nebraska					
New Hampshire*					
North Dakota*					
Ohio					
Oregon*					
Rhode Island					
South Dakota					
Washington					
West Virginia					
Wisconsin					
Wyoming					

Source: U.S. Department of Labor, Office of Workers' Compensation Programs, January 2003; the U.S. Chamber of Commerce, 2003 Analysis of Workers' Compensation Laws, 2003; and various state workers' compensation agency websites, 2004.

Note: \* In these states if an employer and/or insurance carrier has a managed care arrangement for workers' compensation, then injured workers are required to choose a treating doctor from within the employer's or carrier's network.

\*\* If an employer has designated at least two Health Care Organizations (HCOs), then the timeframe that an employer has to choose the treating doctor is normally extended.

## **Types of Income Benefits Available in Texas and Other States**

- The Texas Workers' Compensation Act of 1989 established five types of income benefits payable under the law:
  - Temporary Income Benefits (TIBs) – paid during the period of temporary disability (lost time from work) while the worker is recovering from an on-the-job injury;
  - Impairment Income Benefits (IIBs) – paid to injured workers for permanent impairment sustained as a result of the on-the-job injury (impairment evaluations are currently based on the *Guides to the Evaluation of Permanent Impairment*, 4<sup>th</sup> Edition, published by the American Medical Association);<sup>2</sup>
  - Supplemental Income Benefits (SIBs) – paid to injured workers for ongoing disability after IIBs have been exhausted, with all eligibility for SIBs ending at 401 weeks after the date of injury;<sup>3</sup>
  - Lifetime Income Benefits (LIBs) – paid for the life of the injured worker for specific catastrophic injuries (e.g., total and permanent loss of sight in both eyes) as set forth in Section 408.161 of the Texas *Labor Code*;
  - Death Benefits (DBs) and Burial Benefits – paid to the deceased workers' spouse or eligible beneficiaries as a result of a death from a compensable injury.
  
- The terminology used to describe workers' compensation income benefits in Texas differs from that of other states. For example, in most states, an injured worker who has lost time from work typically receives Temporary Total Disability (TTD) benefits, while in Texas the same worker receives Temporary Income Benefits (TIBs).
  
- If a worker has an injury that results in a permanent impairment, that worker generally receives Permanent Partial Disability (PPD) benefits in other states, while in Texas the same worker receives Impairment Income Benefits (IIBs) and possibly Supplemental Income Benefits (SIBs). If a worker sustains a catastrophic injury in other states, that worker may be eligible to receive Permanent Total Disability Benefits (PTD), while in Texas; the same worker may be eligible to receive Lifetime Income Benefits (LIBs).

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<sup>2</sup> Injured workers in Texas receive three weeks of IIBs for each percentage point of impairment assigned. For example, an injured worker with a 5 percent impairment rating would receive 15 weeks of IIBs. See Section 408.121, Texas *Labor Code*.

<sup>3</sup> SIBs are available only to injured workers who have exhausted their IIBs, who receive an impairment rating of at least 15 percent, and who sustain ongoing disability (i.e., an inability to work or to earn their pre-injury wage as a direct result of an on-the-job injury). See Section 408.142, Texas *Labor Code*.

## Waiting Periods and Retroactive Periods for Income Benefits

- Overall, most states require injured employees to wait either 3 days or 7 days before receiving income benefits (22 states have a 3-day waiting period; 1 state has a 4-day waiting period, 5 states have a 5-day waiting period and 22 states, including Texas, have a 7-day waiting period). **See Table 3.**
- Many states allow injured employees to recoup their income benefits for the waiting period after a specified period of time set by statute (this is often referred to as the “retroactive period”). Most states have a statutory retroactive period of 14 days (4 states have no statutory retroactive period; 11 states have a 5-10-day retroactive period; 22 states have a 14-day retroactive period; 8 states have a 21-day retroactive period; 3 states, including Texas, have a 28-day retroactive period and 2 states have a 42-day retroactive period). **See Table 4.**

**Table 3**  
**State-by-State Comparisons of Statutory Waiting Periods**  
**as of January 2003**

3 Days	4 Days	5 Days	7 Days
Alabama	North Dakota	Idaho	Arizona
Alaska		Massachusetts	Arkansas
California		Mississippi	Florida
Colorado		Nevada	Georgia
Connecticut		Montana	Indiana
Delaware			Kansas
Hawaii			Kentucky
Illinois			Louisiana
Iowa			Maine
Maryland			Michigan
Minnesota			Nebraska
Missouri			New Jersey
New Hampshire			New Mexico
Oklahoma			New York
Oregon			North Carolina
Rhode Island			Ohio
Utah			Pennsylvania
Vermont			South Carolina
Washington			South Dakota
West Virginia			Tennessee
Wisconsin			<b>Texas</b>
Wyoming			Virginia

Source: U.S. Department of Labor, Office of Workers’ Compensation Programs, January 2003; the U.S. Chamber of Commerce, 2003 Analysis of Workers’ Compensation Laws, 2003; and various state workers’ compensation agency websites, 2004.

**Table 4**  
**State-by-State Comparisons of Statutory Retroactive Periods**  
**as of January 2003**

No Retroactive Period	5-10 Days (# of days in parentheses)	14 Days	21 Days	28 Days	42 Days
Hawaii	North Dakota (5)	California	Alabama	Alaska	Louisiana
Oklahoma	Nevada (5)	Colorado	Massachusetts	New Mexico	Nebraska
Rhode Island	Connecticut (7)	Illinois	Florida	<b>Texas</b>	
Montana	Delaware (7)	Iowa	Georgia		
	Vermont (7)	Maryland	Indiana		
	West Virginia (7)	New Hampshire	Kansas		
	Wisconsin (7)	Oregon	North Carolina		
	South Dakota (7)	Utah	Virginia		
	New Jersey (7)	Washington			
	Wyoming (8)	Indiana			
	Minnesota (10)	Mississippi			
		Arizona			
		Arkansas			
		Kentucky			
		Maine			
		Michigan			
		South Carolina			
		Pennsylvania			
		Ohio			
		New York			
		Tennessee			
		Missouri			

Source: U.S. Department of Labor, Office of Workers' Compensation Programs, January 2003; the U.S. Chamber of Commerce, 2003 Analysis of Workers' Compensation Laws, 2003; and various state workers' compensation agency websites, 2004.

## Temporary Total Disability (TTD) Benefits

### *Statutory Compensation Rates for Temporary Total Disability (TTD) Benefits*

- TTD benefits (referred to as Temporary Income Benefits or TIBs in Texas) are the most common type of income benefit paid to injured workers. These benefits are generally paid while the injured worker is off work due to an on-the-job injury. Most states, including Texas, pay TTD benefits as a percentage of the worker's gross earnings (i.e., pre-tax earnings).
- Thirty-five states pay TTD benefits based on 66-2/3 percent of the injured worker's gross average weekly wage (AWW), which is lower than the 70 to 75 percent of the average weekly wage paid in Texas (5 states, including Texas, pay TTD benefits at a rate equal to 70 percent of the AWW).<sup>4</sup> **See Table 5.**
- Six states pay TTD benefits based on after-tax earnings (usually at a rate equal to 75-80 percent of a worker's spendable wages).
- The remaining states pay TTD benefits at various percentages of a worker's gross average weekly wage (e.g., Massachusetts - 60 percent of the AWW, Idaho - 72 percent of the AWW).

**Table 5**  
**State-by-State Comparisons of Temporary Total Disability (TTD) Benefit Rates and Benefit Duration as of January 2003**

State	TTD Weekly Compensation Rate (as a % of the worker's average weekly wage)
Alabama	66 2/3%
Alaska	80% of after tax earnings
Arizona	66 2/3%
Arkansas	66 2/3%
California	66 2/3%
Colorado	66 2/3%
Connecticut	75% of after tax earnings
Delaware	66 2/3%
Florida	66 2/3%
Georgia	66 2/3%
Hawaii	66 2/3%
Idaho	67%
Illinois	66 2/3%
Indiana	66 2/3%

<sup>4</sup> Weekly Temporary Income Benefits (TIBs) are paid to injured workers in Texas at a rate of 70 percent of the gross average weekly wage (AWW) if they earn more than \$8.50 per hour. If the employee earns less than \$8.50 per hour, TIBs are paid at a rate of 75 percent of the gross AWW for the first 26 weeks of disability and 70 percent thereafter.

**Table 5**  
**State-by-State Comparisons of Temporary Total Disability (TTD) Benefit Rates and**  
**Benefit Duration, *continued* as of January 2003**

State	TTD Compensation Rate (as a % of the worker's average weekly wage)
Iowa	80% of after tax earnings
Kansas	66 2/3%
Kentucky	66 2/3%
Louisiana	66 2/3%
Maine	80% of after tax earnings
Maryland	66 2/3%
Massachusetts	60%
Michigan	80% of after tax earnings
Minnesota	66 2/3%
Mississippi	66 2/3%
Missouri	66 2/3%
Montana	66 2/3%
Nebraska	66 2/3%
Nevada	66 2/3%
New Hampshire	60%
New Jersey	70%
New Mexico	66 2/3%
New York	66 2/3%
North Carolina	66 2/3%
North Dakota	66 2/3%
Ohio	72% for first 12 weeks, 66 2/3% thereafter
Oklahoma	70%
Oregon	66 2/3%
Pennsylvania	66 2/3%
Rhode Island	75% of after tax earnings
South Carolina	66 2/3%
South Dakota	66 2/3%
Tennessee	66 2/3%
<b>Texas</b>	<b>70% for workers who earn over \$8.50/hr; 75% for all others</b>
Utah	66 2/3%
Vermont	66 2/3%
Virginia	66 2/3%
Washington	60-75% depending on marital status and # of dependents
West Virginia	70%
Wisconsin	66 2/3%
Wyoming	66 2/3% of actual monthly wages

Source: U.S. Department of Labor, Office of Workers' Compensation Programs, January 2003; the U.S. Chamber of Commerce, 2003 Analysis of Workers' Compensation Laws, 2003; and various state workers' compensation agency websites, 2004.

## Permanent Partial Disability (PPD) Benefits

### *Statutory Eligibility Requirements for Permanent Partial Disability (PPD) Benefits*

- Permanent Partial Disability (PPD) benefits (referred to as Impairment Income Benefits - IIBs or Supplemental Income Benefits – SIBs in Texas) are paid to injured workers who have suffered either a permanent impairment or a disability as a result of a work-related injury.<sup>5</sup>
- Forty-two states, not including Texas, pay PPD benefits for the loss of use of particular body parts according to a set benefit schedule.<sup>6</sup> For example, an injured worker who loses the use of a foot in a state with a PPD benefit schedule is compensated for a number of weeks proportional to the degree of impairment or disability the injured worker sustained. **See Table 6.**
- All states with benefit schedules also pay PPD benefits for unscheduled injuries. To determine PPD benefits for injuries that are not part of a state’s benefit schedule, states use one or more of the following four basic methods (**see Table 7**).<sup>7</sup>
  - Nineteen states, including Texas, use the impairment approach, which only includes the actual physical and psychological loss produced by the injury. In these states, impairment is generally measured by an impairment rating, which is generally assigned by a doctor using the American Medical Association’s *Guides to the Evaluation of Permanent Impairment* or another rating guide.<sup>8</sup>
  - Thirteen states use a loss of wage-earning capacity approach to determine unscheduled PPD benefits. This approach estimates the impact of the injury on an injured worker’s future wages, often using factors such as age, education, training and skills, the worker’s impairment rating and existing labor-market conditions.
  - Ten states use a wage-loss approach, which determines PPD benefits using the difference between the worker’s pre- and post-injury wages.
  - Eight states use a bifurcated approach. For workers who have returned to work at or near their pre-injury wage, PPD benefits are determined based on their impairment rating, while other workers’ PPD benefits are determined on their loss of wage-earning capacity.

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<sup>5</sup> “Permanent Impairment” is the permanent loss of physical functioning that directly results from a work-related injury (usually measured by an impairment rating, which represents the percentage of a person’s whole body that is impaired as a result of the injury), while “Disability” refers to the economic consequence of a work-related injury (i.e., loss of income or loss of ability to work).

<sup>6</sup> Prior to the 1989 reforms, Texas used a PPD benefit schedule for certain types of injuries.

<sup>7</sup> See Barth, Peter and Michael Niss. *Permanent Partial Disability Benefits: Interstate Differences*, Workers’ Compensation Research Institute, Cambridge, Massachusetts, 1999.

<sup>8</sup> In Texas, doctors assign impairment ratings to injured workers using the American Medical Association’s *Guide to the Evaluation of Permanent Impairment*, fourth edition as mandated by Section 408.124 of the Texas *Labor Code*.

**Table 6**  
**States That Use Benefit Schedules to Pay Permanent Partial Disability (PPD) Benefits for Certain Injuries**

State	Benefit Schedule Linked to Worker's Pre-Injury Wages	Partial Loss of Use of Body Part Rated Based on	
		Impairment	Disability
Alabama	X	X	
Arizona	X	X	
Arkansas	X	X	
California	X		X
Colorado		X	
Connecticut	X	X	
Delaware	X	X	
Georgia	X	X	
Hawaii		X	
Idaho		X	
Illinois	X		X
Indiana		X	
Iowa	X		X
Kansas	X	X	
Louisiana	X	X	
Maine	X	Not applicable	
Maryland	X	X	
Massachusetts		X	
Michigan	X	Not applicable	
Minnesota		X	
Mississippi	X		X
Missouri	X		X
Nebraska	X	X	
New Hampshire	X	X	
New Jersey	X	X	
New Mexico	X		X
New York	X	X	
North Carolina	X	X	X
North Dakota		X	
Ohio		X	
Oklahoma	X	X	
Oregon		X	
Pennsylvania	X	Not applicable	

**Table 6**  
**States That Use Benefit Schedules to Pay Permanent Partial Disability (PPD) Benefits for Certain Injuries, *continued***

State	Benefit Schedule Linked to Worker's Pre-Injury Wages	Partial Loss of Use of Body Part Rated Based on	
		Impairment	Disability
Rhode Island	X	X	
South Carolina	X		X
South Dakota	X	X	
Tennessee	X		X
Utah	X	X	
Virginia	X	X	
Washington		X	
West Virginia	X	X	
Wisconsin	X	X	

Source: Barth, Peter and Michael Niss. *Permanent Partial Disability Benefits: Interstate Differences*, Workers' Compensation Research Institute, Cambridge, Massachusetts, 1999.

Note: Maine, Michigan and Pennsylvania do not schedule partial losses. In Maryland, where impairment is below a certain level, the condition is evaluated on a disability basis. New York pays benefits for certain scheduled losses with impairment ratings at or above 50 percent. In North Carolina, the worker chooses whether the loss is rated as an impairment or a disability.

**Table 7**  
**Methods States Use to Pay Permanent Partial Disability (PPD) Benefits for Unscheduled Injuries**

State	PPD Benefits Based on			
	Impairment	Loss of Wage-Earning Capacity	Wage Loss	Bifurcated Approach
Alabama				X
Alaska	X			
Arizona			X	
Arkansas				X
California		X		
Colorado	X			
Connecticut	X			
Delaware	X			
Florida	X			
Georgia	X			
Hawaii	X			
Idaho		X		
Illinois		X		
Indiana	X			
Iowa		X		
Kansas				X

**Table 7: Methods States Use to Pay Permanent Partial Disability (PPD) Benefits for Unscheduled Injuries, *continued***

State	PPD Benefits Based on			
	Impairment	Loss of Wage-Earning Capacity	Wage Loss	Bifurcated Approach
Kentucky				X
Louisiana			X	
Maine			X	
Maryland		X		
Massachusetts			X	
Michigan			X	
Minnesota	X			
Mississippi		X		
Missouri		X		
Montana				X
Nebraska		X		
Nevada	X			
New Hampshire			X	
New Jersey	X			
New Mexico		X		
New York		X		
North Carolina				X
North Dakota			X	
Ohio			X	
Oklahoma	X			
Oregon		X		
Pennsylvania			X	
Rhode Island			X	
South Carolina		X		
South Dakota	X			
Tennessee				X
<b>Texas</b>	X			
Utah	X			
Vermont	X			
Virginia	X			
Washington	X			
West Virginia	X			
Wisconsin				X
Wyoming		X		

Source: Barth, Peter and Michael Niss. *Permanent Partial Disability Benefits: Interstate Differences*, Workers' Compensation Research Institute, Cambridge, Massachusetts, 1999.

Note: In Connecticut, Minnesota, North Carolina, and Virginia, almost all losses are scheduled.

## *Statutory Compensation Rates for Permanent Partial Disability (PPD) Benefits*

- Most states, including Texas, pay PPD benefits as a percentage of the worker's gross earnings (i.e., pre-tax earnings).
- Twenty-nine states pay PPD benefits based on 66-2/3 percent of the injured worker's gross average weekly wage (AWW), which is lower than the 70 percent of the average weekly wage paid in Texas for IIBs.<sup>9</sup> **See Table 8.**
- Five states pay PPD benefits based on after-tax earnings (usually at a rate equal to 75-80 percent of a worker's spendable wages).
- The remaining states pay PTD benefits at various percentages of a worker's gross average weekly wage (e.g., New Hampshire - 60 percent of the AWW, West Virginia - 70 percent of the AWW).

**Table 8**  
**State-by-State Comparisons of Permanent Partial Disability (PPD) Benefit Rates and Benefit Duration, as of January 2003**

State	PPD Weekly Compensation Rate (as a % of the worker's average weekly wage)
Alabama	66 2/3%
Alaska	* See Note
Arizona	55%
Arkansas	66 2/3%
California	66 2/3%
Colorado	* See Note
Connecticut	75% of after tax earnings
Delaware	66 2/3%
Florida	50% of workers' weekly TTD benefits
Georgia	66 2/3%
Hawaii	66 2/3%
Idaho	No statutory provision
Illinois	60%
Indiana	66 2/3%
Iowa	80% of after tax earnings
Kansas	66 2/3%
Kentucky	66 2/3%

<sup>9</sup> In Texas, an injured worker begins to receive Impairment Income Benefits (IIBs) once the worker reaches Maximum Medical Improvement (MMI) and receives an impairment rating by the worker's treating doctor or the Texas Workers' Compensation Commission (TWCC) Designated Doctor. For each percentage of impairment, the injured worker receives 3 weeks of IIBs paid at a rate of 70 percent of the worker's gross average weekly wage (AWW). If a worker has an impairment rating of 15 percent or higher, has not returned to work or has returned to work, but is earning less than 80 percent of the worker's pre-injury weekly wage, then the injured worker may be eligible to receive Supplemental Income Benefits (SIBs). SIBs are paid quarterly to injured workers at a rate of 80 percent of the difference between 80 percent of the worker's pre- and post-injury weekly wages.

**Table 8**  
**State-by-State Comparisons of Permanent Partial Disability (PPD) Benefit Rates and**  
**Benefit Duration, *continued* as of January 2003**

State	PPD Compensation Rate (as a % of the worker's average weekly wage)
Louisiana	66 2/3%
Maine	80% of after tax earnings
Maryland	66 2/3%
Massachusetts	60% of the difference between worker's average weekly wage before and after injury
Michigan	80% of after tax earnings
Minnesota	66 2/3%
Mississippi	66 2/3%
Missouri	66 2/3%
Montana	66 2/3%
Nebraska	66 2/3%
Nevada	No statutory provision
New Hampshire	60%
New Jersey	70%
New Mexico	66 2/3%
New York	66 2/3%
North Carolina	66 2/3%
North Dakota	No statutory provision
Ohio	No statutory provision
Oklahoma	70%
Oregon	66 2/3%
Pennsylvania	66 2/3%
Rhode Island	75% of after tax earnings
South Carolina	66 2/3%
South Dakota	66 2/3% for scheduled injuries & 50% for non-scheduled injuries
Tennessee	66 2/3%
<b>Texas</b>	<b>IIBs – 70%; SIBs – 80% of the difference between 80% of the worker's average weekly wage before and after injury</b>
Utah	66 2/3%
Vermont	66 2/3%
Virginia	66 2/3%
Washington	No statutory provision
West Virginia	70%
Wisconsin	66 2/3%
Wyoming	66 2/3%

Source: U.S. Department of Labor, Office of Workers' Compensation Programs, January 2003; the U.S. Chamber of Commerce, 2003 Analysis of Workers' Compensation Laws, 2003; and various state workers' compensation agency websites, 2004.

## **Statutory Caps on Income Benefits**

### *For Temporary Total Disability (TTD) Benefits:*

- Out of fifty states, Texas ties for 34th in terms of statutory maximum weekly payments for TTD benefit payments at \$537 week. This level is lower than both the national average of \$624.16 and the national median of \$588. The \$537 limit is considerably lower than the nation's highest TTD benefit level of \$1,103 in Iowa and considerably higher than the nation's lowest TTD benefit level of \$331.06 in Mississippi. **See Table 9.**
- Of the 44 states that use a percentage of the State Average Weekly Wage (SAWW) to set the maximum TTD benefit payment, the vast majority (50 percent, Texas included) currently set the maximum TTD benefit payment at 100 percent of the SAWW.<sup>10</sup> **See Table 9.**
- Of the 42 states that have a statutory minimum weekly payment amount for TTD benefits, Texas ranks 23<sup>rd</sup> with a minimum TTD benefit level of \$81 per week. The highest minimum TTD weekly benefit level was \$374.99 in Pennsylvania and the lowest was \$20 in Florida and Arkansas. **See Table 10.**

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<sup>10</sup> SB 1574 (78<sup>th</sup> Legislature, regular session, 2003) statutorily set the state average weekly wage (SAWW) for fiscal year 2004 at \$537 and for fiscal year 2005 at \$539. Prior to SB 1574 the SAWW was based on the annual average weekly wage of manufacturing production workers in Texas as calculated annually by the Texas Workforce Commission (TWC). Early in the 78th session it was discovered that the methodology that TWC used to calculate this rate had changed and as a result, the cap on workers' compensation income benefits would have increased by an estimated \$40 in FY 2004, creating an estimated additional cost to the system of about \$5.6 million a year. In response to the need for a statutory change to avoid an unintended increase in the cap on benefits and the short time available for consideration of a new benchmark, SB 1574 set the SAWW for fiscal year 2004 at \$537 (the same as in FY 2003) and for FY 2005 at \$539. However, it was anticipated that the 79<sup>th</sup> Legislature would re-examine this issue and set a new benchmark for calculating the SAWW.

**Table 9**  
**State-by-State Rankings of Temporary Total Disability (TTD) Benefit Maximums**  
**as of January 2003**  
**(rankings are from highest to lowest maximum weekly TTD benefit payments)**

Rank	State	Maximum Weekly TTD Benefit Payment	Maximum TTD Compensation Rate (as a % of the State Average Weekly Wage)
1	Iowa	\$1,103	200%
2	New Hampshire	\$1,018.5	150%
3	Illinois	\$998.12	133 1/3%
4	Connecticut	\$909	100%
5	Massachusetts	\$882.57	100%
6	Washington	\$868.68	120%
7	Oregon	\$865.78	133%
8	Vermont	\$865	150%
9	Alaska	\$814	120%
10	Minnesota	\$750	No provision
11	Maryland	\$722	100%
12	Rhode Island	\$702	110%
13	Virginia	\$681	100%
14	Pennsylvania	\$675	100%
15	North Carolina	\$674	110%
16	Wisconsin	\$669	110%
17	Colorado	\$659.12	91%
18	Michigan	\$653	90%
19	Missouri	\$649.32	105%
20	Ohio	\$644	100%
21	New Jersey	\$638	75%
22	Florida	\$608	100%
23	California	\$602	No provision
24	Tennessee	\$599	100%
25	Indiana	\$588	No provision
26	Nevada	\$580.72	100%
27	Hawaii	\$580	100%
28	Kentucky	\$571.42	100%
29	Alabama	\$569	100%
30	South Carolina	\$563.55	100%

**Table 9**  
**State-by-State Rankings of Temporary Total Disability (TTD) Benefit Maximums**  
**as of January 2003, *continued***  
**(rankings are from highest to lowest maximum weekly TTD benefit payments)**

Rank	State	Maximum Weekly TTD Benefit Payment	Maximum TTD Compensation Rate (as a % of the State Average Weekly Wage)
31	Utah	\$562	100%
32	Nebraska	\$542	100%
33	New Mexico	\$540.07	100%
34	North Dakota	\$537	110%
<b>34</b>	<b>Texas</b>	<b>\$537</b>	<b>100%</b>
35	Oklahoma	\$528	100%
36	Wyoming	\$527	100% of State Average Monthly Wage
37	West Virginia	\$526.81	100%
38	Delaware	\$491.57	66 2/3%
39	Maine	\$491.35	90%
40	South Dakota	\$482	100%
41	Idaho	\$474.3	90%
42	Montana	\$473	100%
43	Arkansas	\$440	85%
44	Kansas	\$432	75%
45	Louisiana	\$416	75%
46	Georgia	\$400	No provision
46	New York	\$400	No provision
47	Arizona	\$374.01	No provision
48	Mississippi	\$331.06	66 2/3%

Source: U.S. Department of Labor, Office of Workers' Compensation Programs, January 2003; the U.S. Chamber of Commerce, 2003 Analysis of Workers' Compensation Laws, 2003; and various state workers' compensation agency websites, 2004.

**Table 10**  
**State-by-State Rankings of Temporary Total Disability (TTD) Benefit Minimums**  
**as of January 2003**  
**(rankings are from highest to lowest minimum weekly TTD benefit payments)**

Rank	State	Minimum Weekly TTD Benefit Payment	Minimum TTD Compensation Rate (as a % of the State Average Weekly Wage)
1	Pennsylvania	\$374.99	50%
2	North Dakota	\$293	60%
3	Vermont	\$288	50%
4	South Dakota	\$241	50%
5	Ohio	\$214.67	33 1/3%
6	New Hampshire	\$203.70	30%
7	Connecticut	\$181.80	20% of maximum benefit payment
8	Michigan	\$181.24	No provision
9	Massachusetts	\$176.51	20%
10	Virginia	\$170.25	25%
11	New Jersey	\$170	20%
12	Delaware	\$163.86	33 1/3%
13	Alabama	\$156	27.5%
14	West Virginia	\$144.2	33 1/3%
15	Hawaii	\$137	25%
16	Minnesota	\$130	No provision
17	California	\$126	No provision
18	Kentucky	\$114.28	20%
19	Louisiana	\$111	20%
20	Alaska	\$110	No provision
21	Illinois	\$100.90	No provision
22	Tennessee	\$89.85	No provision
<b>23</b>	<b>Texas</b>	<b>\$81</b>	<b>15%</b>
24	Idaho	\$79.05	15%
25	South Carolina	\$75	No provision
26	Indiana	\$50	No provision
27	Oregon	\$50	No provision
28	Maryland	\$50	No provision
29	Nebraska	\$49	No provision
30	Utah	\$45	No provision

**Table 10**  
**State-by-State Rankings of Temporary Total Disability (TTD) Benefit Minimums**  
**as of January 2003, *continued***  
**(rankings are from highest to lowest minimum weekly TTD benefit payments)**

Rank	State	Minimum Weekly TTD Benefit Payment	Minimum TTD Compensation Rate (as a % of the State Average Weekly Wage)
31	Washington	\$43.17	No provision
32	Georgia	\$40	No provision
33	New York	\$40	No provision
34	Missouri	\$40	No provision
35	New Mexico	\$36	No provision
36	North Carolina	\$30	No provision
37	Wisconsin	\$30	No provision
38	Oklahoma	\$30	No provision
39	Kansas	\$25	No provision
40	Mississippi	\$25	No provision
41	Florida	\$20	No provision
42	Arkansas	\$20	No provision

Source: U.S. Department of Labor, Office of Workers' Compensation Programs, January 2003; the U.S. Chamber of Commerce, 2003 Analysis of Workers' Compensation Laws, 2003; and various state workers' compensation agency websites, 2004.

## **Statutory Time Limitations on Income Benefits**

### *For Temporary Total Disability (TTD) Benefits:*

- Texas is one of 18 states that limits the maximum duration of Temporary Total Disability (TTD) benefits to less than the full duration of the injured worker's disability (i.e., the total amount of time an injured worker is off work due a work-related injury). The remaining 33 states pay TTD benefits for the full duration of disability. **See Table 11.**
- Three states, including Texas, limit the duration of TTD benefits to 104 weeks. For the remaining fifteen states with set limits on TTD benefit duration, the maximum numbers of weeks TTD benefits are paid ranges from 156 weeks in Massachusetts and Oklahoma to 500 weeks in Indiana, South Carolina, and Virginia.

### *For Permanent Partial Disability (PPD) Benefits:*

- Texas is one of 29 states that place statutory time limitations on Permanent Partial Disability (PPD) benefits. These statutory time limitations range from a low of 260 weeks in Massachusetts to a high of 1,500 weeks in North Dakota; however, most statutory time limitations, including Texas' 401 week time limit on PPD benefits, range from 300 weeks to 600 weeks. **See Table 11.**

**Table 11**  
**State-by-State Comparisons of Temporary Total Disability (TTD) and Permanent Partial Disability (PPD) Benefit Durations as of January 2003**

State	Maximum TTD Benefit Duration	Maximum PPD Benefit Duration
Alabama	Duration of disability	300 weeks
Alaska	Duration of disability	No statutory provision
Arizona	Duration of disability	Duration of disability
Arkansas	450 weeks	450 weeks
California	Duration of disability	No statutory provision
Colorado	Duration of disability	Duration of disability
Connecticut	Duration of disability	520 weeks
Delaware	Duration of disability	300 weeks
Florida	104 weeks	No statutory provision
Georgia	400 weeks	Based on statutory schedule
Hawaii	Duration of disability	No statutory provision
Idaho	Duration of disability	500 weeks
Illinois	Duration of disability	500 weeks
Indiana	500 weeks	No statutory provision
Iowa	Duration of disability	500 weeks
Kansas	Duration of disability	415 weeks
Kentucky	Duration of disability	425 weeks
Louisiana	Duration of disability	520 weeks
Maine	Duration of disability	364 weeks or duration of disability if impairment rating exceeds 13.2%
Maryland	Duration of disability	Duration of disability
Massachusetts	156 weeks	260 weeks
Michigan	Duration of disability	Duration of disability
Minnesota	104 weeks	No statutory provision
Mississippi	450 weeks	450 weeks
Missouri	400 weeks	400 weeks
Montana	Duration of disability*	350 weeks
Nebraska	Duration of disability	300 weeks
Nevada	Duration of disability	Duration of disability
New Hampshire	Duration of disability	262 weeks
New Jersey	400 weeks	600 weeks
New Mexico	Duration of disability	500 weeks if disability is less than 80%; 700 weeks if greater than 80%
New York	Duration of disability	Duration of disability

**Table 11**  
**State-by-State Comparisons of Temporary Total Disability (TTD) Benefit Rates and**  
**Benefit Duration, *continued* as of January 2003**

State	Maximum TTD Benefit Duration	Maximum PPD Benefit Duration
North Carolina	Duration of disability	300 weeks
North Dakota	Duration of disability	1,500 weeks
Ohio	Duration of disability	No statutory provision
Oklahoma	156 weeks	500 weeks
Oregon	Duration of disability	No statutory provision
Pennsylvania	Duration of disability	500 weeks
Rhode Island	Duration of disability	312 weeks
South Carolina	500 weeks	340 weeks
South Dakota	Duration of disability	Duration of disability
Tennessee	400 weeks	400 weeks
<b>Texas</b>	<b>104 weeks</b>	<b>401 weeks</b>
Utah	312 weeks	312 weeks
Vermont	Duration of disability	No statutory provision
Virginia	500 weeks	500 weeks
Washington	Duration of disability	No statutory provision
West Virginia	208 weeks	No statutory provision
Wisconsin	Duration of disability	1,000 weeks
Wyoming	Duration of disability	No statutory provision

Source: U.S. Department of Labor, Office of Workers' Compensation Programs, January 2003; the U.S. Chamber of Commerce, 2003 Analysis of Workers' Compensation Laws, 2003; and various state workers' compensation agency websites, 2004.

## **State Workers' Compensation System Administrative Structures**

- Nineteen states, including Texas, have set up a separate state agency to administer the state's workers' compensation system. The remaining thirty-one states have workers' compensation division attached to a larger state agency (generally the equivalent of a division of the Texas Workforce Commission or the Texas Department of Insurance). **See Table 12.**
- A majority of states (27 states) utilize a single commissioner, administrator or presiding judge to oversee the administration of the state's workers' compensation system. Generally these are also the states that have a workers' compensation division attached to a larger state agency.
- The remaining twenty-three states, including Texas, have governing boards that range from three full-time members to sixteen part-time members. The majority of these governing boards are appointed by the Governor of the state.

**Table 12**  
**Organizational and Administrative Structures of State Workers' Compensation Systems**  
**All 50 States**

State	Organizational Structure	Name	Administrative Structure
Alabama	Division	Department of Industrial Relations	Single administrator
Alaska	Division	Department of Labor & Workforce Development	Twelve member board appointed by the Governor that serves 6 year terms.
Arizona	Division	Industrial Commission of Arizona	Five member commission appointed by the Governor. Commission chairman appointed by Governor for 5 year term.
Arkansas	Separate Agency	Workers' Compensation Commission	Three full time members appointed by the Governor for terms of six (6) years.
California	Division	Department of Industrial Relations	Single administrator
Colorado	Division	Department of Labor & Employment	Single administrator
Connecticut	Separate Agency	Workers' Compensation Commission	Sixteen Workers' Compensation Commissioners nominated by the Governor to serve for 5 year terms.
Delaware	Division	Department of Labor	Ten Board Members each of whom shall be appointed by the Governor for a term of six years.
Florida	Division	Department of Insurance	Single administrator
Georgia	Separate Agency	State Board of Workers' Compensation	Three members who shall be appointed by the Governor for a term of four years.
Hawaii	Division	Department of Labor & Industrial Relations	Single administrator
Idaho	Separate Agency	Industrial Commission	Three members, to be appointed by the Governor, with the approval of the senate for six year terms.
Illinois	Separate Agency	Industrial Commission	Seven members that are appointed by the Governor.
Indiana	Separate Agency	Workers' Compensation Board	Seven members, not more than four from the same political party, appointed by the Governor, one of whom is designated as chairman.
Iowa	Division	Iowa Workforce Development	Single commissioner appointed by the Governor for a six year term.

State	Organizational Structure	Name	Administrative Structure
Kansas	Division	Kansas Department of Human Resources	Single administrator
Kentucky	Division	Department of Labor, Office of Workers' Claims	Single Commissioner under the direction of the Secretary of the Labor.
Louisiana	Division	Department of Labor	Single administrator
Maine	Separate Agency	Workers' Compensation Board	Eight member board selected by the Governor.
Maryland	Separate Agency	Workers' Compensation Commission	Ten Commissioners appointed by the Governor for a twelve year term
Massachusetts	Separate Agency	Department of Industrial Accidents	Single Commissioner appointed by the Governor serving same term as the Governor.
Michigan	Division	Bureau of Workers' & Unemployment Compensation	Single administrator appointed by the Governor.
Minnesota	Division	Department of Labor & Industry	Single Commissioner appointed by the Governor
Mississippi	Separate Agency	Workers' Compensation Commission	Three Commissioners appointed by the Governor for 6 year terms.
Missouri	Division	Department of Labor & Industrial Relations	Seven Commissioners appointed by the Governor.
Montana	Division	Department of Labor & Industry	Single administrator.
Nebraska	Separate Agency	Workers' Compensation Court	Seven Judges appointed by the Governor for six year terms.
Nevada	Division	Department of Business & Industry	Seven member board appointed by the Governor.
New Hampshire	Division	Department of Labor	Single administrator
New Jersey	Division	Department of Labor	Presiding judge/director
New Mexico	Separate Agency	Workers' Compensation Administration	Workers' Compensation Director appointed by the Governor to serve a five year term.
New York	Separate Agency	Workers' Compensation Board	Thirteen member board appointed by Governor and confirmed by the Senate to serve seven year terms.

State	Organizational Structure	Name	Administrative Structure
North Carolina	Separate Agency	Industrial Commission	Seven member board appointed by Governor for six year terms. Chairman also appointed by Governor.
North Dakota	Separate Agency	Workforce Safety and Insurance	Ten member Board of Directors appointed by the Governor to serve staggered four year terms.
Ohio	Separate Agency	Bureau of Workers' Compensation	Single administrator
Oklahoma	Division	Department of Labor	Single commissioner who is elected every four years.
Oregon	Division	Department of Consumer & Business Services	Five member board appointed by Governor to serve four year terms.
Pennsylvania	Division	Department of Labor & Industry	Single administrator appointed by Governor.
Rhode Island	Division	Department of Labor & Training	Single administrator
South Carolina	Separate Agency	Workers' Compensation Commission	Seven Commissioners appointed by the Governor for six year terms.
South Dakota	Division	Department of Labor	Single administrator
Tennessee	Division	Department of Labor and Workforce Development	Single administrator
Texas	Separate Agency	Workers' Compensation Commission	Six Commissioners (3 employee and 3 employee representative) appointed by the Governor to serve staggered six year terms.
Utah	Division	Industrial Commission	Single Commissioner to serve at pleasure of the Governor.
Vermont	Division	Department of Labor & Industry	Single administrator
Virginia	Separate Agency	Workers' Compensation Commission	Three Member Board chosen by General Assembly for six year terms.
Washington	Division	Department of Labor and Industries	Single administrator
West Virginia	Division	Bureau of Employment Programs	Three Commissioners appointed by the Governor.
Wisconsin	Division	Department of Workforce Development	Single administrator
Wyoming	Division	Department of Employment	Single administrator

Source: U.S. Department of Labor, Office of Workers' Compensation Programs, January 2003 and various state workers' compensation agency websites, 2004.

